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ELLSWORTH C. ALVORD (1964)

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RECORDATION NO. 18223-B FILED  
DEC 27 '00 10:17 AM  
SURFACE TRANSPORTATION BOARD  
OF COUNSEL  
URBAN A. LESTER

December 26, 2000

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are three (3) copies of an Assignment and Assumption Agreement, dated December 19, 2000, a secondary document as defined in the Board's Rules for the Recordation of Documents.

The enclosed document relates to the Railcar Lease Agreement which was previously filed with the Board under Recordation Number 18223.

The names and addresses of the parties to the enclosed document are:

Seller/Assignor: The CIT Group/Equipment Financing, Inc.  
1211 Avenue of the Americas  
New York, NY 10036

Buyer/Assignee: Babcock & Brown Rail  
Funding LLC  
599 Lexington Avenue  
New York, NY 10022

A description of the railroad equipment covered by the enclosed document is:

89 coal hopper railcars within the series CTRN 400001 - CTRN 400115

Mr. Vernon A. Williams  
December 26, 2000  
Page Two

A short summary of the document to appear in the index follows:

Assignment and Assumption Agreement from The CIT Group/  
Equipment Financing, Inc., Assignor, to Babcock & Brown Rail  
Funding LLC, Assignee, covering 89 coal hopper railcars  
within the series CTRN 400001 - CTRN 400115.

Also enclosed is a check in the amount of \$26.00 payable to the order  
of the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. Alvord', with a stylized flourish at the end.

Robert W. Alvord

RWA/anm  
Enclosures

RECORDATION NO. 18223-B FILED

DEC 27 '00 10:17 AM

ASSIGNMENT AND ASSUMPTION AGREEMENT

SURFACE TRANSPORTATION BOARD

This Assignment and Assumption Agreement, dated December 19, 2000 (this "*Agreement*"), is between The CIT Group/Equipment Financing, Inc., a New York corporation (the "*Seller*"), and Babcock & Brown Rail Funding LLC, a Delaware limited liability company (the "*Buyer*").

WITNESSETH:

WHEREAS, the Buyer and the Seller have entered into that certain Purchase Agreement, dated as of December 19, 2000 (the "*Purchase Agreement*"), providing for the purchase of the Ownership Interest by the Buyer from the Seller, subject to the terms and conditions set forth therein; and

WHEREAS, the Purchase Agreement contemplates the execution and delivery of this Agreement by the Seller and the Buyer on the date hereof.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows.

1. *Definitions.* Capitalized terms used herein without definition shall have the meanings assigned to them in Section 4 of this Agreement.

2. *Assignment.* Effective as to each item of Equipment on the Closing Date, the Seller sells to the Buyer all of the Seller's rights, title and interest in and to such item and assigns to the Buyer all of the Seller's rights and obligations, except to the extent constituting Existing Obligations, under each of the following as they relate to such item:

(a) the Railcar Lease Agreement dated April 28, 1993 (the "*Lease*") by and between the Seller and Southern Pacific Transportation Company (the "*Lessee*");

(b) the Tax Indemnity Agreement dated as of April 28, 1993; and

(c) the Supplement and Acceptance Certificate dated April 29, 1993 between the Seller and the Lessee (collectively, the "*Assigned Operative Agreements*").

Notwithstanding the foregoing, the Seller shall continue to be entitled to the benefit of any rights to indemnification for tax and other matters which arose or may arise from or be related to any event or circumstance occurring or in existence prior to the Closing Date, as specified in the Purchase Agreement.

3. *Acceptance of Assignment; Assumption of Obligations; Effect of Assignment.* The Buyer accepts the assignment contained in Section 2 hereof and, in respect of the period on and

after the Closing Date, assumes all obligations of the Seller under, and agrees to be bound to the same extent as the Seller by all the terms of, the Assigned Operative Agreements. Effective on and after the Closing Date, the Buyer shall be deemed to stand in the place of the Seller for all purposes under the Assigned Operative Agreements and each reference in the Assigned Operative Agreements to the Seller shall be deemed to mean the Buyer. The Seller, in respect of the period on and after the Closing Date, is released of all obligations of the lessor under the Assigned Operative Agreements, except to the extent constituting Existing Obligations.

4. *Definitions.* Except as otherwise specified or as the context may otherwise require, the following terms have the respective meanings set forth below whenever used in this Agreement (terms defined in the singular to have a correlative meaning when used in the plural and vice versa).

*Bill of Sale:* as to an item of Equipment, a bill of sale in the form of Exhibit I hereto.

*Closing Date:* as to an item of Equipment and related Ownership Interest the date of the Bill of Sale with respect thereto.

*Equipment:* the items of equipment listed on Exhibit A hereto, together with each and every part, accessory, component and any equipment installed therein or attached thereto owned by the Seller (individually such railcars shall be referred to as an "*item*" or "*items of Equipment*").

*Existing Obligations:* any and all liabilities and obligations of Seller under the Ownership Interest, including the Assigned Operative Agreements, or otherwise relating to the Equipment in each such case, to the extent arising or occurring prior to the Closing Date (whether or not asserted or assessed), and, with respect to the obligations, to have been performed by Seller prior to the Closing Date.

*Lease:* the definition ascribed to it in Section 2 hereof.

*Lessee:* the definition ascribed to it in Section 2 hereof.

*Ownership Interest:* the Seller's rights, title and interest in and to the Equipment and the Seller's rights and obligations under the Assigned Operative Agreements.

5. *Amendments.* No provision of this Agreement may be amended, modified or waived except by written agreement duly executed by each of the parties hereto.

6. *Notices.* All notices, requests or other communications to or upon any party hereto in connection herewith shall be given in the manner prescribed by Section 9.5 of the Purchase Agreement.

7. *Headings.* The section headings used in this Agreement are for convenience of reference only and shall not be used or construed to define, interpret, expand or limit any provision hereof.

8. *Counterparts.* This Agreement may be executed in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

9. *Governing Law.* This Agreement shall be governed by, and construed and enforced in accordance with, the internal substantive laws of the State of New York, without giving effect to the conflict of law rules thereof, other than Section 5-1401 of the New York General Obligations Law.

10. *Recordation.* The Seller and the Buyer agree to record this Agreement with the Surface Transportation Board to evidence the assignment by the Seller to the Buyer of the Seller's rights and obligations under the Lease, if and only if the Lease has been recorded with the Surface Transportation Board.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the date first above written.

BABCOCK & BROWN RAIL FUNDING LLC

By: Thomas Tuggle  
Name: THOMAS TUGGLE  
Title: PRESIDENT

THE CIT GROUP/EQUIPMENT FINANCING, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the date first above written.

BABCOCK & BROWN RAIL FUNDING LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE CIT GROUP/EQUIPMENT FINANCING, INC.

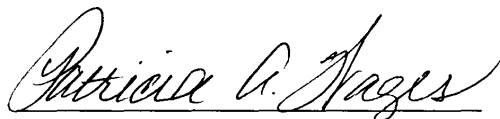
By: Nancy A. Nardella  
Name: NANCY A. NARDELLA  
Title: Vice President

State of New York

County of New York

On this, the 19<sup>TH</sup> day of December, 2000, before me, a Notary Public in and for said County and State, personally appeared Thomas M. Tuggle who acknowledged himself to be a duly authorized officer of Babcock & Brown Rail Funding LLC, and that, as such officer, being authorized to do so, he executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date above mentioned.



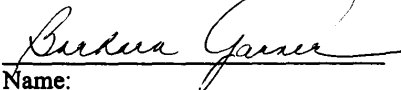
PATRICIA A. WAGES  
Notary Public, State of New York  
No. 01WA6051049  
Qualified in Queens County  
Commission Expires November 13, 2002



STATE OF NEW YORK     )  
                                  ) ss.:  
COUNTY OF NEW YORK    )

On this 17<sup>th</sup> day of December, 2000, before me, a Notary Public in and for said County and State, personally appeared Nancy A. Nardella, a Vice President of The CIT Group/Equipment Financing, Inc., who acknowledged herself to be a duly authorized officer of said Delaware corporation, and that, as such officer, being authorized to do so, she executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date above mentioned.

  
Name: \_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_  
Residing in: \_\_\_\_\_

BARBARA GARNER  
Notary Public, State of New York  
No. 01GA5065133  
Qualified in Nassau County  
Certificate filed in New York County  
Commission Expires Sept. 3, 2002

### Exhibit A

# Cars	Year Built	Description	Reporting Marks	Casualty Marks
89	1991	3,870 cubic foot, 100 ton aluminum rapid discharge coal hopper railcars, manufactured by Bethlehem Steel.	CTRN 400001-400115, inclusive	CTRN 400002, 400007, 400008, 400013, 400014, 400023, 400031, 400032, 400034, 400037, 400044, 400049, 400058, 400059, 400064, 400066, 400069, 400074, 400083, 400086, 400094, 400098, 400102, 400103, 400106, 400114